

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

KATHERINE SEAMAN, individually and on)	
behalf of all others similarly situated, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	
)	18-CV-1781 (PGG) (BCM)
NATIONAL COLLEGIATE STUDENT)	
LOAN TRUST 2007-2, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	
)	
CHRISTINA BIFULCO, individually and on)	
behalf of all others similarly situated, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	18-CV-7692 (PGG) (BCM)
)	
NATIONAL COLLEGIATE STUDENT)	
LOAN TRUST 2004-2, <i>et al.</i> ,)	
)	
Defendants.)	

**DEFENDANTS'
NOTICE OF ADDITIONAL AUTHORITY**

NOW COMES Defendants, by and through undersigned counsel, who file this Notice of Additional Authority in further support Defendants' Rule 12(b)(1) Motion to Dismiss (*See* Docket Nos. 371, 372, 393, and 408) and Opposition to Class Certification (*See* Docket Nos. 323 and 414).

Two recent circuit court decisions, and one decision from Judge Karas in this Court, provide additional persuasive authority on the issues raised in Defendants' briefing.

In *Perez v McCreary*, the Fifth Circuit clarified that standing for a “false, deceptive, and misleading” claim under § 1692e of the Fair Debt Collection Practices Act (“FDCPA”), like the one asserted by plaintiffs in this case, are analogous to “fraudulent misrepresentation torts. Such torts make A liable for B’s pecuniary losses where A intentionally misleads B and B justifiably relies on that misrepresentation.” *See Perez v. McCreary, Veselka, Bragg & Allen, P.C.*, 2022 WL 3355249, *5 (5th Cir. Aug. 15, 2022), attached as **Exhibit A**. “Congress’s concern in prohibiting ‘false, deceptive, or misleading representation[s] or means in connection with the collection of any debt’ wasn’t consumer privacy. It was the economic harms that consumers suffered due to aggressive and unfair attempts to collect their debts.” *Id* at *6.

In *Drazen v Pinto*, the Eleventh Circuit held “TransUnion says that we can’t award damages to plaintiffs who do not have Article III standing. And Article III standing goes to the heart of our jurisdiction to hear cases in the first place. We cannot, therefore, check our Article III requirements at the door of the class action. Any class definition that includes members who would never have standing under our precedent is a class definition that cannot stand.” *See Drazen v. Pinto*, 41 F.4th 1354, 1362 (11th Cir. July 27, 2022), attached as **Exhibit B**.

In *Spira v TransUnion, LLC*, Judge Karas held a plaintiff’s false credit reporting claim lacked standing where she failed to allege dissemination of the credit report to any third-party beyond the credit reporting agency. *See Spira v. Trans Union, LLC*, 2022 WL 2819469, *5 (S.D. N.Y. July 19, 2022) (“The only third party that Plaintiff specifically alleges received the allegedly inaccurate information regarding his HSBC account is

Equifax. . . . But credit reporting agencies like Equifax are not the type of third parties contemplated by the Supreme Court in *TransUnion*.”), attached as **Exhibit C**.

Respectfully submitted,

/s/ Michael Alltmont

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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2022, a true and correct copy of the foregoing was served upon the attorneys of record by operation of the ECF filing system, including:

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